FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 15 2007

Mr. Richard Guay, Esq.
Meyer, Suozzi, English & Klein, PC
1350 Broadway, Suite 501
New York, NY 10018-0026

RE: MUR 5766
Amalgamated Bank

Dear Mr. Guay:

By letter dated July 3, 2006, your client, Amalgamated Bank ("Amalgamated"), was notified that the Federal Election Commission found reason to believe that Amalgamated violated 2 U.S.C. § 441b. On July 27, 2006, Amalgamated submitted a response to the Commission's reason to believe finding. After considering the circumstances of the matter, the Commission determined on October 11, 2007, to take no further action as to Amalgamated, and closed the file at it pertains to this respondent. The Factual and Legal Analysis, which explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 694-1505.

Sincerely,

Christine C. Gallagher

Christine C. Gallagher
Attorney

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Amalgamated Bank   MUR 5766

I. BACKGROUND

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

The Commission previously found reason to believe that Amalgamated Bank violated 2 U.S.C. § 441b in connection with two loans it made to the Democrat Republican Independent Voter Education – PAC of the International Brotherhood of Teamsters and C. Thomas Keegel, in his official capacity as treasurer ("DRIVE") in October and November 2002 totaling $500,000 and authorized an investigation into the matter.[1] *See* First General Counsel's Report, dated June 2, 2006. This finding was based on information contained in the Final Audit Report ("FAR") for DRIVE. The FAR showed, among other things, that the bank loans did not appear to be made in the ordinary course of business or on a basis that assured repayment as defined by the Act and the Commission's regulations. *See* 2 U.S.C. § 441b and 11 C.F.R. § 100.7(b)(11); *see also* FAR (06-01), *Finding 1. Apparent Prohibited Contributions – Bank Loans.* Although the supporting loan documentation indicated that the loans were secured, the audit revealed that the loans were not, in fact, secured with the sources of collateral defined by the Commission's regulations for

[1] All of the facts recounted in this Report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

meeting its standard for assurance of repayment (*i.e.*, perfected security interest in collateral, pledge of future receipts, and/or guarantee by secondary sources). *Id.*; *see also* 11 C.F.R. § 100.7(b)(11)(i)(A) and (B).

Based upon the evidence uncovered during the investigation, it appears that the bank loans were made on a basis that assures repayment when considering the totality of the circumstances. *See* 11 C.F.R. § 100.7(b)(11)(ii); *see also* Advisory Opinion 1994-26 (September 26, 1994); Explanation and Justification for Regulations on Loans From Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67118, 67119-67121 (Dec. 27, 1991).

II. FACTUAL AND LEGAL ANALYSIS

A. <u>Given the Totality of the Circumstances, the Amalgamated Bank Loans to DRIVE were Made on a Basis that Assures Repayment.</u>

Absent a perfected security interest in collateral or pledge of future receipts, the Commission will consider the totality of the circumstances in determining whether a loan was made on a basis that assures repayment. *See* 11 C.F.R. § 100.7(b)(11)(ii); *see also* Explanation and Justification, Loans from Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67118 (Dec. 27, 1991).

In reviewing the totality of the circumstances regarding assurance of repayment, a number of factors are evaluated in determining whether a bank could expect a loan to be repaid, including the borrower's financial situation (e.g., income and credit background), the borrower's pre-existing relationship to the lending bank, and the terms of the loan. *See* Advisory Opinion 1994-26; *see also* MURs 5198 (Cantwell 2006), 5262/5266 (Tim Ryan for Congress) and 5685 (Joe Turnham for Congress). As discussed more fully below, the evidence revealed during the investigation has established that Amalgamated considered each of these factors in determining whether to make the loans to DRIVE.

1) <u>Amalgamated Evaluated DRIVE's Creditworthiness at the Time of the Original Loan Application.</u>

The evidence uncovered during the investigation reveals that Amalgamated followed its usual and customary underwriting procedures in making these loans to DRIVE in 2002.

Thomas Metzinger, the Director of Investments and Pension Administration, initially requested the loans from Amalgamated on behalf of DRIVE. *See* T. Metzinger Dep. Tr. at 12, 18. In August 2002, Metzinger met with Joseph C. Conner, Jr., then First Vice-President of Amalgamated Bank, and brought up DRIVE's loan request.[2] *See* T. Metzinger Dep. Tr. at 25, 26, and 27. At this meeting, Metzinger told Conner that DRIVE would pledge future receipts, e.g., membership contributions, as collateral for the loans. *See* T. Metzinger Dep. Tr. at 26. In late August or early September 2002, per Conner's request, Metzinger provided DRIVE's financial statements and a current cash flow statement, which he received from DRIVE's accountant, Martin Kendall. *See* T. Metzinger Dep. Tr. at 16, 28, and 29.

Pursuant to Amalgamated's standard operating procedures, the bank reviewed the request and the financial information submitted by DRIVE, and performed a standard credit review and profitability analysis of DRIVE, as evidenced by the Credit Approval Memorandum dated October 25, 2002. *See* Amalgamated Bank's Response, at p. 3 and Exhibit B, July 26, 2006. A Dunn & Bradstreet report revealed a clear history rating. *Id.* at Exhibit B. DRIVE's total revenues for 2000 and 2001 were $4.2 million and $4.6 million, respectively. *Id.* at Exhibit B.

[2] Originally, DRIVE requested a $300,000 loan, and then it later asked for another $200,000 loan. *See* T. Metzinger Dep. Tr. at 22, 35.

Amalgamated also considered DRIVE's current cash flows, which reflected similar trends in the income statement and balance sheet for fiscal year 2002. *Id.* at Exhibit B. Based upon this information, Amalgamated prepared a profitability analysis for DRIVE and determined it had an acceptable financial condition, giving it good Obligator Risk and Facility Risk Ratings, meaning that the borrower has demonstrated cash flow, relatively good credit, and otherwise offered sufficient collateral. *See* T. Sullivan Dep. Tr. at 78, 79, and 82.

There are two notable aspects to Amalgamated's review of DRIVE's credit history. The first is that draft financial statements were used to evaluate DRIVE's financial condition, and second, the Credit Approval Memorandum notes that DRIVE's contributions are voluntary, and therefore, difficult to project. *See* Amalgamated Bank's Response, at Exhibit B, July 26, 2006.

Usually Amalgamated required final financial statements from the borrower prior to approving the loan. *See* Conner Affidavit at ¶ 15. Although a draft financial statement is not preferred, it is not rare to receive such drafts from other customers. *See* T. Sullivan Dep. Tr. at 91, 109, and 110. The financial statements are one aspect of the overall underwriting process, and the fact that they are in draft form is taken into consideration with other factors, such as collateral and covenants, when deciding whether to approve a loan. *Id.*

The evidence shows that Amalgamated considered the variable nature of DRIVE's membership contributions when making the loans. *See* Amalgamated Bank's Response at Exhibit B, July 26, 2006. There would be two main sources of variability, the future employment of the DRIVE members and their future willingness to participate in the program. *See* M. Kendall Dep. Tr. at 80, 81. However, these contributions are small in denomination and there are many of them, so they come in great waves every two weeks or whenever the payments are made. *See* T. Sullivan Dep. Tr. at 136, 137. Therefore, as a practical matter, the number of pledges coming in to DRIVE is "rather overwhelming," and has been consistent for a number of years. *Id.* Amalgamated took this into consideration when making the loans. *Id.*

It is possible that another bank might not have made these loans to DRIVE because it was not familiar with dues check-offs or how they work. *See* Conner Affidavit at ¶ 19, May 25, 2007. However, Amalgamated had a long-term relationship with unions, so it was very familiar with dues check-offs as a source of income. *Id.* Conner, the Amalgamated Bank First Vice-President who initially arranged the loans to DRIVE, stated that in his opinion, based upon his knowledge and banking experience, dues check-offs are a "pretty dependable" source of income. *Id.*

All loans are approved by a committee process. *See* T. Sullivan Dep. Tr. at 20, 21, 22, 78 and 79. The evidence showed that Amalgamated followed its usual and customary procedures in the approval process for the loans to DRIVE. Credit Facility Offering memorandums were prepared for both loans and reviewed by the loan committee. *See* Amalgamated Bank's Response at p. 3 and Exhibit C, July 26, 2006. Both Credit Facility Offerings show the initials of eleven (11) individuals of Amalgamated including officers of the bank who constituted its loan review committee. *Id.* In addition, the president of the bank approved the loans before they went to committee for review. *See* T. Sullivan Dep. Tr. at 87, 88.

Once the loans were approved, they were fully and properly documented according to Amalgamated's standard operating procedures. *See* Amalgamated Bank's Response at pp. 3, 4, July 26, 2006. Each of the following loan documents were executed by an appropriate officer of DRIVE and delivered to the bank, as is the bank's custom: Promissory Notes, Continuing Security Agreements, Deposit Account Pledge Agreement, Covenant Agreements, and

Certificates of Resolutions. *See id.* at Exhibits D, E, G, H, I, J, K, and L. Because the loans were made to a PAC, the bank took an extra step and counsel reviewed the loan documents for completeness. *See* T. Sullivan Dep. Tr. at 108.

2) <u>Amalgamated had a Favorable Pre-existing Banking Relationship with DRIVE Prior to the Extension of Credit in 2002.</u>

Amalgamated had an overall good relationship with DRIVE on past loans. *See* T. Sullivan Dep. Tr. at 57. The bank had previously made loans to DRIVE that were repaid in full and on time. *See* Amalgamated Bank's Response at p. 6, July 26, 2006.

In October of 1998, DRIVE obtained a $300,000 six-month term loan from Amalgamated. *Id.* Again, in October of 2000, DRIVE borrowed a total of $1,000,000 from Amalgamated on a six-month term loan. *Id.* Both loans were repaid pursuant to their respective terms. *Id.* Both prior loans were based upon the bank's receipt of a perfected security interest in DRIVE's receipt of membership contributions and DRIVE's ability to convert such pledges into cash. *Id.* In addition, the Credit Approval Memorandum sets forth that DRIVE indicated to the bank that it had in the past obtained two loans from Crestar Bank: one in 1996 for $500,000 and in 1992 for $300,000. *See* Amalgamated Bank's Response at Exhibit B, July 26, 2006.

As is typically done by the bank for other customers, DRIVE's previous satisfactory loan experience and its depository relationship with Amalgamated (e.g., deposit accounts maintained at the bank and deposit of its membership contributions into those accounts) were factors considered by the bank in making the loans to DRIVE. *Id.*; *see also* T. Sullivan Dep. Tr. at 81.

3) <u>The Terms of the Loans do not Appear to be Out of the Ordinary or Unduly Favorable to DRIVE.</u>

The loans bore interest at the bank's "Base Rate," which was 4.75% at the origination of the loans and was a variable rate. *See* Amalgamated Bank's Response at p. 6, July 26, 2006.

This was the bank's usual and customary rate of interest at the time for commercial loans. *Id.*; *see also* T. Sullivan Dep. Tr. at 120, 121, and 122. Both loans were for a term of six months and each promissory note set forth a specific maturity date. *See* Amalgamated Bank's Response at Exhibits D and J, July 26, 2006.

Historically, Amalgamated has made loans to private companies, commercial companies, not for profits, and labor unions. *See* T. Sullivan Dep. Tr. at 19, 20, 26, and 27. In 2006, Amalgamated made about 45 commercial loans with an average loan amount of $2.5 million. *See* T. Sullivan Dep. Tr. at 25. In this matter, it does not appear that the principal amount of the loans to DRIVE, e.g., $500,000 was unduly large when compared to other loans made by the bank. In addition, DRIVE demonstrated an ability to collect contributions that exceeded the principal amount of the loans by a factor of nine. *See* Amalgamated Bank's Response at p. 7, July 26, 2006; *see also* T. Sullivan Dep. Tr. at 76.

Therefore, the Commission has determined to take no further action as to Amalgamated Bank in connection with its finding that there is reason to believe the bank violated 2 U.S.C. § 441b.